

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues.

Rulemaking 10-05-004  
(Filed May 6, 2010)

**DECISION GRANTING REQUEST OF THE UTILITY REFORM NETWORK FOR  
INTERVENOR COMPENSATION FOR CONTRIBUTIONS TO DECISION  
(D.) 10-09-046, D.11-09-015, D.11-12-030, AND ASSIGNED COMMISSIONER RULINGS**

|  |  |
|--|--|
| <b>Claimant: The Utility Reform Network</b>  | <b>For contribution to D.10-09-046, D.11-09-015, D.11-12-030, and Assigned Commissioner Rulings (“ACRs”)</b> |
| <b>Claimed (\$): \$28,897.50</b>             | <b>Awarded (\$): \$28,927.50</b>   |
| <b>Assigned Commissioner: Michael Peevey</b> | <b>Assigned ALJ: Dorothy Duda and Maryam Ebke</b>  |

**PART I: PROCEDURAL ISSUES**

**A. Brief Description of Decision:** These decisions all address elements of the California Solar Initiative (CSI) and the Self Generation Incentive Program (SGIP).

D.10-09-046 implemented changes to the CSI budget allocation in order to increase the incentive budget.

D.11-09-015 implemented changes to the SGIP eligibility rules and incentive structure pursuant to Senate Bill 412.  
D.11-12-030 adopted changes to the SGIP budget for 2012-2014 pursuant to Assembly Bill 1150.

**B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:**

|   | <b>Claimant</b>              | <b>CPUC Verified</b>  |
|---|------------------------------|---|
| <b>Timely filing of notice of intent to claim compensation (§ 1804(a)):</b> |                              |   |
| 1. Date of Prehearing Conference:   |                              | March 23, 2006  |
| 2. Other Specified Date for NOI:  | Eligibility from R.08-03-008 | Correct   |
| 3. Date NOI Filed:  |                              | April 21, 2006  |
| 4. Was the notice of intent timely filed?                                   |                              | Yes   |
| <b>Showing of customer or customer-related status (§ 1802(b)):</b>          |                              |   |
| 5. Based on ALJ ruling issued in proceeding number:                         | R.06-03-004                  | Correct   |
| 6. Date of ALJ ruling:  | May 16, 2006                 | Correct   |
| 7. Based on another CPUC determination (specify):                           |                              | Relevant portions of TURN's articles of incorporation were provided in A.98-02-017.   |
| 8. Has the claimant demonstrated customer or customer-related status?       |                              | Yes. TURN met the definition of customer, as provided in § 1802(b)(1)(C).   |
| <b>Showing of "significant financial hardship" (§ 1802(g)):</b>             |                              |   |
| 9. Based on ALJ ruling issued in proceeding number:                         | R.06-03-004                  | Correct   |
| 10. Date of ALJ ruling:   | May 16, 2006                 | Correct   |
| 11. Based on another CPUC determination (specify):                          |                              | A.05-02-027   |
| 12. Has the claimant demonstrated significant financial hardship?           |                              | Yes. A rebuttable presumption of eligibility existed, since TURN received a finding of significant financial hardship in A.05-02-027, issued on November 4, 2005. |

|   | <b>Claimant</b>   | <b>CPUC Verified</b> |
|---|-------------------|----------------------|
| <b>Timely request for compensation (§ 1804(c)):</b> |                   |                      |
| 13. Identify Final Decision                         | D.11-12-030       | Correct              |
| 14. Date of Issuance of Final Decision:             | December 20, 2011 | Correct              |
| 15. File date of compensation request:              | February 21, 2012 | Correct              |
| 16. Was the request for compensation timely?        |                   | Yes                  |

**C. Additional Comments on Part I:**

| <b>#</b> | <b>Claimant</b> | <b>CPUC</b>    | <b>Comment</b>  |
|----------|-----------------|----------------|---|
| 2        |                 | <b>Correct</b> | <i>See</i> , OIR, Sec. 7 re. Intervenor Compensation – based on R.08-03-008, which was in turn based on R.06-03-004.                |
| 15       |                 | <b>Correct</b> | The file date was calculated according to Rule 1.15, accounting for a weekend and the President’s Day holiday on February 20, 2012. |

**PART II: SUBSTANTIAL CONTRIBUTION****A. Claimant’s contribution to the final decision:**

| <b>Contributions to D.10-09-046</b>  | <b>Citation to Decision or Record</b>                      | <b>Showing Accepted by CPUC</b> |
|--|--|---------------------------------|
| 1. Discount Rate:<br>TURN recommended against changing the Performance Based Incentive (PBI) discount rate. The Commission agreed that it was premature to reduce the discount rate at this time.  | TURN Comments, 7/22/10, p. 3-5.<br>D.10-09-046, p. 10-11   | <b>Yes</b>                      |
| 2. Budget Shift to Incentives:<br>TURN supported shifting administrative funds to incentives, and recommended specifically using Marketing and Outreach (M&O) funds for incentives.<br><br>The Commission shifted \$40 million from both the Measurement and Evaluation (M&E) and M&O budgets to incentives. | TURN Comments, 7/22/10, p. 2.<br><br>D.10-09-046, p. 21-23 | <b>Yes</b>                      |

| <b>Contributions to D.11-09-015</b>  | <b>Citation to Decision or Record</b>  | <b>Showing Accepted by CPUC</b> |
|--|--|---------------------------------|
| <p>1. SGIP Eligibility:</p> <p>TURN supported using GHG emissions as the primary screen, and did not advocate using the cost effectiveness screen proposed by staff.</p> <p>The Commission determined that only the GHG screen should be used to determine eligibility.</p>  | <p>TURN Comments, 11/15/10, p. 2-4;<br/>TURN Reply Comments in R.08-03-008, 1/19/10, p. 4-6.</p> <p>D.11-09-015, p. 12-13.</p>   | <b>Yes</b>                      |
| <p>2. GHG Emissions Factor:</p> <p>TURN supported Staff's recommended emissions factor against opposition from various parties.</p> <p>The Commission agreed with the arguments advanced by staff and TURN supporting a lower emissions factor.</p>  | <p>TURN Reply Comments, 12/10/10, p. 2-4.</p> <p>D.11-09-015, p. 14-15.</p>  | <b>Yes</b>                      |
| <p>3. Directed Biogas: TURN's primary focus in this proceeding was to exclude the eligibility of directed biogas for additional incentives.</p> <p>The Commission stayed the SGIP program in order to address this issue, and agreed that out-of-state biogas should not be eligible for SGIP incentives. The Commission dismissed TURN's concern regarding potential dormant commerce clause issues by explaining that SGIP is a positive incentive rather than a tax or imposed condition.</p> | <p>TURN Reply Comments, 12/10/10, p. 7-9;<br/>TURN Reply Comments, 5/9/11, p. 1-4;<br/>TURN Reply Comments, 8/15/11, p. 1-3.<br/>ACR, 2/10/11.</p> <p>D.11-09-015, p. 21-24;</p> | <b>Yes</b>                      |
| <p>4. Incentive Structure: TURN strongly supported a performance-based incentive mechanism, and argued that at least 75% of the payments be based on performance.</p> <p>The Commission adopted a hybrid incentive mechanism with 50% up front payment. The Commission agreed with TURN that the PBI should apply to all technologies.</p>   | <p>TURN Comments, 11/15/10, p. 4-6;<br/>TURN Reply Comments, 12/10/10, p. 4-6.</p> <p>D.11-09-015, p. 30-33 and footnote 25 (sec. 4.3.2).</p>                                    | <b>Yes</b>                      |
| <p>5. Incentive Cap: The Commission adopted a cap on incentives, and agreed with TURN that such a cap was administratively feasible.</p>   | <p>TURN Reply Comments, 5/9/11, p. 4.</p> <p>D.11-09-015, p. 50 (sec. 4.3.6).</p>  | <b>Yes</b>                      |

| <b>Contributions to D.11-09-015</b>  | <b>Citation to Decision or Record</b>   | <b>Showing Accepted by CPUC</b> |
|--|---|---------------------------------|
| <p>6. Export Limit: TURN strongly supported the proposed limit on exports to the grid, though TURN argued that the limit should be even more restrictive than the proposed 25% annual export limit.</p> <p>The Commission agreed with TURN that there should be a limit on grid exports, though the Commission declined to adopt a more restrictive limit.</p> | <p>TURN Comments, 11/15/10, p. 6-7;<br/>TURN Reply Comments, 8/15/11, p. 3-4.<br/>D.11-09-015, p. 59-60 (sec. 4.5.4).</p> | <b>Yes</b>                      |

| <b>Contributions to D.11-12-030</b>   | <b>Citation to Decision or Record</b>                             | <b>Showing Accepted by CPUC</b> |
|---|---|---------------------------------|
| <p>1. SGIP Budget:</p> <p>TURN recommended against authorizing a three-year SGIP budget and recommended a smaller budget for 2012 based on historical spending.</p> <p>The Proposed Decision issued on November 10, 2011 adopted only a one-and-a-half year budget.</p> <p>The final decision rejected TURN's recommendation, though it agreed that a review of spending and participation rates should be conducted.</p> | <p>Proposed Decision, 11/10/11, p. 4.<br/>D.11-12-030, p. 4-5</p> | <b>Yes</b>                      |
| <p>2. Accounting:</p> <p>TURN recommended a clarification to ensure only "confirmed reservation" amounts were collected, which the Commission adopted.</p>  | <p>D.11-12-030, p. 5.</p>   | <b>Yes</b>                      |

**B. Duplication of Effort (§§ 1801.3(f) & 1802.5):**

|  | <b>Claimant</b> | <b>CPUC Verified</b> |
|--|-----------------|----------------------|
| <b>a. Was DRA a party to the proceeding? (Y/N)</b>   | <b>Y</b>        | <b>Correct</b>       |
| <b>b. Were there other parties to the proceeding? (Y/N)</b>  | <b>Y</b>        | <b>Correct</b>       |
| <p><b>c. If so, provide name of other parties:</b></p> <p>There were parties representing technology vendors and manufacturers, as well as industry associations representing Combined Heat and Power (CHP), wind, fuel cell and other industries. Please see service list for complete list of parties.</p> |                 | <b>Correct</b>       |

|  | Claimant | CPUC Verified |
|--|----------|---------------|
| <p><b>d. Claimant’s description of how Claimant coordinated with DRA and other parties to avoid duplication or how Claimant’s participation supplemented, complemented, or contributed to that of another party:</b></p> <p>TURN's compensation in this proceeding should not be reduced for duplication of the showings of other parties. In a proceeding involving multiple participants, it is virtually impossible for TURN to completely avoid some duplication of the work of other parties. In this case, TURN took all reasonable steps to keep such duplication to a minimum, and to ensure that when it did happen, our work served to complement and assist the showings of the other parties.</p> <p>TURN and DRA were the only consumer representatives actively participating in the proceeding. While our efforts overlapped to a limited degree, our showings were largely complementary. In contrast, a large number of parties represented the interests of vendors, manufacturers and large industrial customers.</p> <p>Any incidental duplication that may have occurred here was more than offset by TURN’s unique contributions to the proceeding. Under these circumstances, no reduction to our compensation due to duplication is warranted given the standard adopted by the Commission in D.03-03-031.</p> |          | Correct       |

**C. Additional Comments on Part II:**

| # | Claimant             | CPUC | Comment  |
|---|----------------------|------|--|
|   | Partial Contribution | Yes  | <p>The Commission has interpreted the Section 1802 definition, in conjunction with Section 1801.3, so as to effectuate the legislature’s intent to encourage effective and efficient intervenor participation. The statutory provision of “in whole or in part,” as interpreted by multiple Commission decisions on intervenor compensation requests, has established as a general proposition that when a party makes a substantial contribution in a multi-issue proceeding, it is entitled to compensation for time and expenses even if it does not prevail on some of the issues. <i>See</i>, for example, D.98-04-028 (awarding TURN full compensation in CTC proceeding, even though TURN did not prevail on all issues); D.98-08-016, pp. 6, 12 (awarding TURN full compensation in SoCalGas PBR proceeding); D.00-02-008, pp. 4-7, 10 (awarding TURN full compensation even though we unsuccessfully opposed settlement).</p> <p>In this proceeding, TURN was highly successful, even though the Commission did not adopt all of TURN’s recommendations (for example, limiting excess sales to 10%, using only the M&amp;O budget component for budget shifting). TURN thus believes that our contributions warrant compensation for all of our time and expenses in this proceeding. TURN does not seek any compensation for the time (approximately 13 hours) spent on issues where TURN did not file any pleadings or seek to contribute to the outcome.</p> |

| # | Claimant                          | CPUC | Comment  |
|---|-----------------------------------|------|--|
|   | Contribution to Proposed Decision | Yes  | <p>The Commission has repeatedly held that an intervenor's contribution to a final decision may be supported by contributions to a proposed decision, even where the Commission's final decision does not adopt the proposed decision's position on a particular issue. <i>See</i>, for example, D.92-08-030, <i>mimeo.</i> at 4; D.96-08-023, <i>mimeo.</i> at 4; D.96-09-024, <i>mimeo.</i> at 19; D.99-11-006, pp. 9-10 (citing D.99-04-004 and D.96-08-023); D.01-06-063, pp. 6-7.</p> <p>In this proceeding, TURN's recommendation concerning SGIP budgets for 2012-14 were partially adopted in the Proposed Decision issued 11/10/11, but were ultimately rejected in D.11-12-030 due to comments from vendors and market participants.</p> |
|   | Record from R.08-03-008           | Yes  | TURN filed comments on SB 412 implementation in R.08-03-008, which were incorporated into the record of this proceeding.   |

### PART III: REASONABLENESS OF REQUESTED COMPENSATION

#### A. General Claim of Reasonableness (§§ 1801 & 1806):

| Explanation by Claimant:   | CPUC Verified |
|--|---------------|
| <p>This proceeding involved policy issues concerning SGIP program elements, so a direct contribution cannot be quantified based on a proposed disallowance. However, TURN's recommendations concerning, for example, the PBI incentive structure and eligibility of directed biogas will have direct financial benefits for ratepayers. Ratepayers will have more assurance that actual energy will be produced for at least 50% of the incentive amounts, and ratepayers will not subsidize out-of-state biogas development projects that have no tangible benefits for California.</p> | Correct       |

#### B. Specific Claim\*:

| CLAIMED                    |           |       |         |                          |             | CPUC AWARD |       |         |             |
|----------------------------|-----------|-------|---------|--------------------------|-------------|------------|-------|---------|-------------|
| ATTORNEY AND ADVOCATE FEES |           |       |         |                          |             |            |       |         |             |
| Item                       | Year      | Hours | Rate \$ | Basis for Rate*          | Total \$    | Year       | Hours | Rate \$ | Total \$    |
| Marcel Hawiger             | 2010      | 42.00 | 350     | D.11-09-037, p. 11       | \$14,700.00 | 2010       | 42.00 | 350.00  | \$14,700.00 |
| Marcel Hawiger             | 2011      | 36.50 | 350     | Res. ALJ 247             | \$12,775.00 | 2011       | 36.50 | 350.00  | \$12,775.00 |
| Matthew Freedman           | 2011      | 0.25  | 350     | Requested in A.10-07-017 | \$87.50     | 2011       | 0.25  | 350.00  | \$87.50     |
|                            | Subtotal: |       |         |                          | \$27,562.50 | Subtotal:  |       |         | \$27,562.50 |

**PROPOSED DECISION**

| EXPERT FEES  |           |       |         |                       |            |                 |       |         |             |            |
|--|-----------|-------|---------|-----------------------|------------|-----------------|-------|---------|-------------|------------|
| Item   | Year      | Hours | Rate \$ | Basis for Rate*       | Total \$   | Year            | Hours | Rate \$ | Total \$    |            |
| Jeff Nahigian  | 2010      | 1.5   | 190     | D.10-07-040           | \$285.00   | 2010            | 1.5   | 190.00  | \$285.00    |            |
|  | Subtotal: |       |         |                       | \$285.00   | Subtotal:       |       |         |             | \$285.00   |
| INTERVENOR COMPENSATION CLAIM PREPARATION **   |           |       |         |                       |            |                 |       |         |             |            |
| Item   | Year      | Hours | Rate \$ | Basis for Rate*       | Total \$   | Year            | Hours | Rate \$ | Total \$    |            |
| Marcel Hawiger   | 2012      | 6     | 175     | D.11-09-09-037, p. 11 | \$1050.00  | 2012            | 6     | 180.00  | \$1080.00   |            |
|  | Subtotal: |       |         |                       | \$1,050.00 | Subtotal:       |       |         |             | \$1,080.00 |
| TOTAL REQUEST \$:  |           |       |         | \$28,897.50           |            | TOTAL AWARD \$: |       |         | \$28,927.50 |            |
| <p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it requested compensation, the actual time spend by each employee or consultant, the applicable hourly rates, fees paid to consultants, and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Reasonable claim preparation time typically compensated at ½ of preparer's normal hourly rate.</p> |           |       |         |                       |            |                 |       |         |             |            |

**C. CPUC Comments, Disallowances & Adjustments:**

| # | Reason  |
|---|---|
| 1 | We find no reason to make disallowances to TURN's request for intervenor compensation.  |
| 2 | On September 18, 2012, we adopted a 2.2% cost-of-living adjustment, to be applied to the work performed by intervenors in 2012. (See Resolution ALJ-281.) Since Mr. Hawiger completed the intervenor compensation claim preparation in 2012, he is entitled to have his rate raised by 2.2%, resulting in a rate of \$180.00. |

**PART IV: OPPOSITIONS AND COMMENTS****A. Opposition: Did any party oppose the claim (Y/N)?**

No

**B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6)) (Y/N)?**

Yes



**FINDINGS OF FACT**

1. TURN has made substantial contributions to D.10-09-046, D.11-09-015, D.11-12-030, and Assigned Commissioner Rulings.
2. The claimed fees and costs are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. The total reasonable expense is \$28,927.50.

**CONCLUSION OF LAW**

The claim, with any adjustment set forth above, satisfies all requirements of Public Utilities Code §§ 1801-1812.

**ORDER**

1. TURN is awarded \$28,927.50.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company shall pay The Utility Reform Network the total award. We direct Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company to allocate payment responsibility among themselves based upon their California-jurisdictional gas and electric revenues for 2010 calendar year, to reflect the year in which the proceeding was primarily litigated. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning May 6, 2012, the 75<sup>th</sup> day after the filing of claimant's request, and continuing until full payment is made.
3. The comment period for today's decision is waived.
4. Rulemaking 10-05-004 is closed for purposes of Public Utilities Code Section 1701.5.
5. This decision is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX****Compensation Decision Summary Information**

|                                     |   |                              |
|-------------------------------------|---|------------------------------|
| <b>Compensation Decision:</b>       |   | <b>Modifies Decision?</b> No |
| <b>Contribution Decisions (D.):</b> | D.10-09-046, D.11-09-015, D.11-12-030, and Assigned Commissioner Rulings  |                              |
| <b>Proceeding:</b>                  | R.10-05-004   |                              |
| <b>Authors:</b>                     | ALJ Dorothy Duda and ALJ Maryam Ebke  |                              |
| <b>Payers:</b>                      | Pacific Gas and Electric Company, Southern California Edison Company, Southern California Gas Company, and San Diego Gas & Electric Company |                              |

**Intervenor Information**

| <b>Intervenor</b>          | <b>Claim Date</b> | <b>Amount Requested</b> | <b>Amount Awarded</b> | <b>Multiplier</b> | <b>Reason Change/Disallowance</b>   |
|----------------------------|-------------------|-------------------------|-----------------------|-------------------|---|
| The Utility Reform Network | 02/21/12          | \$28,897.50             | \$28,927.50           | No                | 2012 rate increased, for intervenor compensation claim preparation, to reflect cost-of-living adjustment. Res. ALJ-281 (Sept. 18, 2012) |

**Advocate Information**

| <b>First Name</b> | <b>Last Name</b> | <b>Type</b> | <b>Intervenor</b>          | <b>Hourly Fee Requested</b> | <b>Year Hourly Fee Requested</b> | <b>Hourly Fee Adopted</b> |
|-------------------|------------------|-------------|----------------------------|-----------------------------|----------------------------------|---------------------------|
| Marcel            | Hawiger          | Attorney    | The Utility Reform Network | \$350.00                    | 2010                             | \$350.00                  |
| Marcel            | Hawiger          | Attorney    | The Utility Reform Network | \$350.00                    | 2011                             | \$350.00                  |
| Marcel            | Hawiger          | Attorney    | The Utility Reform Network | \$350.00                    | 2012                             | \$360.00                  |
| Matthew           | Freedman         | Attorney    | The Utility Reform Network | \$350.00                    | 2010                             | \$350.00                  |
| Jeffrey           | Nahigian         | Expert      | The Utility Reform Network | \$190.00                    | 2010                             | \$190.00                  |

**(END OF APPENDIX)**